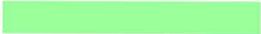


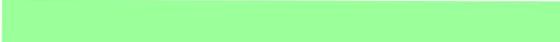
(b)(6)



**U.S. Citizenship  
and Immigration  
Services**



DATE: **APR 12 2013** Office: CALIFORNIA SERVICE CENTER FILE: 

IN RE: Petitioner:   
Beneficiary: 

PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L)

ON BEHALF OF PETITIONER:



**INSTRUCTIONS:**

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

Thank you,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The Director, California Service Center, denied the nonimmigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will sustain the appeal and approve the petition.

The petitioner filed this nonimmigrant petition seeking to extend the beneficiary's employment as an L-1A nonimmigrant intracompany transferee pursuant to section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L). The petitioner, a corporation formed under the laws of the State of Delaware in 2010, and is engaged in "digital life science and healthcare solutions." It claims to be an affiliate of [REDACTED] located in Pune, India. USCIS initially approved the petitioner to open a new office and employ the beneficiary as President and CEO. The petitioner now seeks to extend his L-1A status for an additional three years.

The director denied the petition, concluding that the petitioner failed to establish that the beneficiary would be employed in the United States in a primarily managerial or executive capacity. The director concluded that the petitioner does not have the business need or the organizational complexity to support a full-time managerial position.

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded the appeal to the AAO. On appeal, the petitioner asserted that the evidence of record is sufficient to establish that the beneficiary is and will be employed in the United States in a primarily managerial capacity. The petitioner asserted that the director's decision misrepresents and ignores the facts submitted, and misapplies the applicable statutory and regulatory provisions. The petitioner submitted a brief in support of the appeal.

### I. The Law

To establish eligibility for the L-1 nonimmigrant visa classification, the petitioner must meet the criteria outlined in section 101(a)(15)(L) of the Act. Specifically, a qualifying organization must have employed the beneficiary in a qualifying managerial or executive capacity, or in a specialized knowledge capacity, for one continuous year within three years preceding the beneficiary's application for admission into the United States. In addition, the beneficiary must seek to enter the United States temporarily to continue rendering his or her services to the same employer or a subsidiary or affiliate thereof in a managerial, executive, or specialized knowledge capacity.

The regulation at 8 C.F.R. § 214.2(l)(3) states that an individual petition filed on Form I-129 shall be accompanied by:

- (i) Evidence that the petitioner and the organization which employed or will employ the alien are qualifying organizations as defined in paragraph (l)(1)(ii)(G) of this section.
- (ii) Evidence that the alien will be employed in an executive, managerial, or specialized knowledge capacity, including a detailed description of the services to be performed.

- (iii) Evidence that the alien has at least one continuous year of full-time employment abroad with a qualifying organization within the three years preceding the filing of the petition.
- (iv) Evidence that the alien's prior year of employment abroad was in a position that was managerial, executive or involved specialized knowledge and that the alien's prior education, training, and employment qualifies him/her to perform the intended services in the United States; however, the work in the United States need not be the same work which the alien performed abroad.

The regulation at 8 C.F.R. § 214.2(l)(14)(ii) also provides that a visa petition, which involved the opening of a new office, may be extended by filing a new Form I-129, accompanied by the following:

- (A) Evidence that the United States and foreign entities are still qualifying organizations as defined in paragraph (l)(1)(ii)(G) of this section;
- (B) Evidence that the United States entity has been doing business as defined in paragraph (l)(1)(ii)(H) of this section for the previous year;
- (C) A statement of the duties performed by the beneficiary for the previous year and the duties the beneficiary will perform under the extended petition;
- (D) A statement describing the staffing of the new operation, including the number of employees and types of positions held accompanied by evidence of wages paid to employees when the beneficiary will be employed in a managerial or executive capacity; and
- (E) Evidence of the financial status of the United States operation.

## II. The Issue on Appeal

Upon review, the petitioner's assertions are persuasive. The AAO finds sufficient evidence to establish that the beneficiary will be employed in a primarily managerial capacity. Contrary to the director's observations, the petitioner has provided sufficient documentation to establish that it has been doing sufficient business in the United States within the one-year timeframe to support a full time managerial position.

The petitioner submitted the following initial evidence to demonstrate that it has been doing business in the United States: (1) a Consulting Contract between the petitioner and [REDACTED] valid from July 6, 2010 to July 6, 2011; (2) a Services Agreement between the petitioner and [REDACTED], valid for one year beginning on March 3, 2010; (3) a Master Contract Services Agreement between the petitioner and [REDACTED] valid for two years beginning on February 17, 2010; and (4) a purchase order from the petitioner to the [REDACTED] dated February 18, 2010.

As proof that the petitioner has employees other than the beneficiary, the petitioner initially submitted its [REDACTED] Business Checking Statements showing, *inter alia*, the following withdrawals: "Direct Pay-Payment" for [REDACTED] and [REDACTED] dated July 29, 2010 and June 30, 2010; "Reimbursement of Relocation Expenses of [REDACTED]" dated June 17, 2010; "Consulting fees for 05/10 – 06/10 to [REDACTED]" dated June 9, 2010; and "Reimbursement of expenses [REDACTED]" dated May 18, 2010.

In response to the director's request for evidence (RFE), specifically asking for evidence demonstrating that it has been doing business in the United States, the petitioner further provided: (1) a purchase order from the [REDACTED] to the petitioner, dated October 1, 2010 for the amount of \$40,000; (2) a purchase order from [REDACTED] to the petitioner dated August 30, 2010 for the amount of \$150,000; (3) a letter dated October 4, 2010 from [REDACTED] confirming its intent to do business with the petitioner from August 1, 2010 until July 31, 2011 and confirming its \$150,000 purchase order; (4) a Master Service Agreement between [REDACTED] and the petitioner, valid from July 1, 2010 to June 30, 2011; and (5) a purchase order from [REDACTED] to the petitioner, dated August 27, 2010, for the amount of \$25,000.

In response to the director's RFE asking for evidence that it employed employees other than the beneficiary, the petitioner submitted the following: (1) its Quarterly Wage and Withholding Report showing that it employed only one employee (the beneficiary) at the end of quarter one ending on March 31, 2010; (2) its Quarterly Wage and Withholding Report showing that it employed four employees (the beneficiary, [REDACTED], [REDACTED] at the end of quarter two ending on June 30, 2010; (3) its Quarterly Wage and Withholding Report showing that it employed six employees (the beneficiary, [REDACTED], [REDACTED] and [REDACTED] at the end of quarter three ending on September 30, 2010; and (4) its [REDACTED] Business Checking Statements showing, *inter alia*, multiple withdrawals entitled "Direct Pay- Payment," and "Direct Pay-Payment- Salary."

The above documentation sufficiently establishes that the petitioner is, and has been, doing business in the United States within the previous year. 8 C.F.R. § 214.2(l)(14)(ii)(B). The above documentation also sufficiently establishes that the petitioner maintains an organization of sufficient complexity to relieve the beneficiary from primarily performing the day-to-day duties of the U.S. operations. It is not clear from the record whether the director considered the above documentation.

The AAO acknowledges the director's concern that, in between the filing of the petitioner's initial petition for an extension of the beneficiary's L-1A status [REDACTED] filed on May 13, 2010) and the instant petition [REDACTED] filed on September 20, 2010), the petitioner's organizational and financial situation changed dramatically from employing only one employee (the beneficiary) to employing six employees. The director also noted that the beneficiary's annual salary rose from \$60,000 to \$120,000. While the prior petition is not before the AAO for review, the director did not note any evidentiary discrepancies for the current record.

The AAO acknowledges the director's concern that such drastic changes often signal a need for higher scrutiny. Here, however, the petitioner fully explained the prior denial and offered credible explanations for

these changes, as well as ample evidence to establish that it has sufficient revenue to support the increase in employees and salary. Despite the previous denial, the present petition was filed timely to seek extension of the beneficiary's original one-year period of stay, granted from October 21, 2009 until October 20, 2010. The regulations allow a U.S. petitioner a full one-year period to commence doing business and develop to the point that it will support a managerial or executive position. The only provision that allows for the extension of a "new office" visa petition requires the petitioner to demonstrate that it is staffed and has been "doing business" in a regular, systematic, and continuous manner for the previous year. 8 C.F.R. § 214.2(l)(14)(ii). Despite the surge in staffing, the petitioner has met this burden. Therefore, the fact that the petitioner's situation has changed drastically in a short period of time, alone, should not preclude the approval of the extended petition.

The director's decision was based, in part, on an improper standard. The director should not hold a petitioner to an unsupported standard, noting that "it appears that most small businesses would have little need for one permanent full-time or even a part-time manager position." The director should instead focus on applying the statute and regulations to the facts presented by the record of proceeding. The regulation at 8 C.F.R. § 214.2(l)(3)(v)(C) allows a new office one year within the date of approval of the petition to grow to the point that it can support an executive or managerial position. Here, the petitioner demonstrated such growth during its one year period. The director also made unsupported assertions such as "it does not appear that the petitioner has the organizational complexity to credibly offer even one part-time manager position."

Although USCIS must consider the reasonable needs of the petitioning business if staffing levels are considered a factor, the director must articulate some rational basis for finding a petitioner's staff or structure to be unreasonable. *See* section 101(a)(44)(C) of the Act, 8 U.S.C. § 1101(a)(44)(C). The fact that the petitioner is a small business will not preclude the beneficiary from qualifying from classification under section 101(a)(15)(L) of the Act.

### III. Conclusion

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, the petitioner has sustained that burden. Accordingly, the director's decision is withdrawn and the petition is approved.

**ORDER:** The appeal is sustained.